

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

SEAN PARK; MICHELLE PARK,

Plaintiffs,

vs.

WASHINGTON MUTUAL BANK, et al.,

Defendants.

CASE NO. 10 CV 1548 MMA (AJB)

**ORDER GRANTING  
DEFENDANTS JP MORGAN  
CHASE BANK AND CALIFORNIA  
RECONVEYANCE COMPANY'S  
MOTION TO DISMISS AND  
REQUEST FOR JUDICIAL  
NOTICE**

[Doc. No. 17]

Before the Court is Defendants JPMorgan Chase Bank, N.A. (erroneously sued as Washington Mutual Bank FSB/JPMorgan Chase Home Finance LLC) and California Reconveyance Company's motion to dismiss Plaintiffs Sean Park and Michelle Park's complaint under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief may be granted. [Doc. No. 17.] For the reasons discussed below, the Court **GRANTS** Defendants' motion to dismiss and accompanying request for judicial notice.

**BACKGROUND**

This action arises from foreclosure related events with respect to Plaintiffs' real property located at 7419 Draper Avenue, La Jolla, California 92037 ("Property"). [*Complaint*, Doc. No. 1 at p.4, ¶2.] Although the allegations of the complaint are largely incomprehensible, the Court has discerned the following relevant events. On November 2, 2007, Plaintiffs entered a loan

1 agreement for \$1 million with Washington Mutual Bank to finance the purchase of the Property.  
 2 [*Id.* at p.2, ¶¶6-7; p.4, ¶3; *see also* Doc. No. 17, Ex. 1.] Plaintiffs allege Defendants should not  
 3 have approved them for the large loan given Plaintiffs' "stated income and medium to high-risk  
 4 credit score." [*Complaint* at p.6, ¶31.] Moreover, Defendants allegedly did not provide Plaintiffs  
 5 with disclosures required by the Truth In Lending Act, and Defendants violated the Real Estate  
 6 Settlement Procedures Act by charging improper fees at closing. [*Id.* at p.6, 11.] At some point,  
 7 Plaintiffs fell behind in their loan payments, and Defendant California Reconveyance Company  
 8 ("CRC") recorded Notices of Default on the Property. [Doc. No. 17, Ex. 2.] CRC recorded a  
 9 Notice of Trustee's Sale on April 23, 2010 and on July 2, 2010. [Doc. No. 17, Exs. 3-4.]

10 Plaintiffs initiated this action on July 26, 2010, alleging causes of action for: (1)  
 11 Declaratory Relief; (2) Injunctive Relief; (3) "Determine Nature, Extend and Validity of Lien  
 12 under California Commercial Code § 9313;"<sup>1</sup> (4) Violations of the Truth in Lending Act; (5)  
 13 Violations of the Real Estate Settlement and Procedures Act; (6) Violations of California Civil  
 14 Code § 2932.5; (7) Rescission; (8) Fraud; (9) Violations of the "Unfair and Deceptive Business  
 15 Act Practices;" (10) Breach of Fiduciary Duty; (11) Unconscionability; (12) Predatory Lending in  
 16 violation of California Business and Professions Code § 17200; and (13) Quiet Title. [Doc. No.  
 17 1.] On September 13, 2010, Defendants JPMorgan Chase Bank, N.A. (erroneously sued as  
 18 Washington Mutual Bank FSB/JPMorgan Chase Home Finance LLC) and California  
 19 Reconveyance Company filed the pending motion to dismiss. [Doc. No. 17.] Plaintiffs did not  
 20 oppose the motion.

21 **DISCUSSION**

22 The Ninth Circuit has held a district court may properly grant an unopposed motion to  
 23 dismiss pursuant to a local rule where the local rule permits, but does not require, the granting of a  
 24 motion for failure to respond. *See generally, Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).  
 25 Local Civil Rule 7.1(f)(3)(c) provides that "[i]f an opposing party fails to file papers in the manner  
 26 required by Local Rule 7.1(e)(2), that failure may constitute a consent to the granting of that

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27  
 28 <sup>1</sup> This third cause of action appears to allege a breach of the implied covenant of good faith and  
 fair dealing.

1 motion or other ruling by the court.” As such, the Court has the option of granting Defendants’  
2 motion on the basis of Plaintiffs’ failure to respond, and it chooses to do so.

Generally, public policy favors disposition of cases on their merits. *See, e.g., Hernandez v. City of El Monte*, 138 F.3d 393, 399 (9th Cir. 1998). However, a case cannot move forward toward resolution on the merits when the plaintiffs fail to defend themselves against a Rule 12(b)(6) motion. Thus, this policy lends little support to a party whose responsibility it is to move a case toward disposition on the merits but whose conduct impedes or completely prevents progress in that direction. *See In re Eisen*, 31 F.3d 1447, 1454 (9th Cir. 1994). In addition, management of this Court’s docket is of vital significance to the proper and timely resolution of matters before it. Consequently, the Court finds that granting Defendants’ motion to dismiss pursuant to Local Civil Rule 7.1(f)(3)(c) serves to facilitate the management of its docket in light of the fact that multiple cases similar to the one at bar are currently pending, poised in a similar procedural posture.

## CONCLUSION

15 For the reasons set forth above, the Court **GRANTS** Defendants' motion and **DISMISSES**  
16 the complaint without prejudice as to Defendants JPMorgan Chase Bank, N.A. (erroneously sued  
17 as Washington Mutual Bank FSB/JPMorgan Chase Home Finance LLC) and California  
18 Reconveyance Company. The Clerk of Court is instructed to terminate these Defendants from this  
19 action.

20 || IT IS SO ORDERED

22 || DATED: October 26, 2010

Michael M. - Ruello

Hon. Michael M. Anello  
United States District Judge